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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 SOUTHERN DIVISION

11 POWER PROBE, INC., a California
12 Corporation,

13 Plaintiff,

14 vs.

15 DANIEL BARBER SULLIVAN, an
individual

16 Defendant.

Case No. 8:15-CV-01404 JLS (JCG)

PROTECTIVE ORDER

17
18 In light of the Stipulation of the parties filed herewith, and good cause
19 appearing therefore, **IT IS HEREBY ORDERED** as follows:

20 **I. DEFINITIONS**

21 A. Party

22 Any party to this action, including all of its officers, directors, employees,
23 consultants, retained experts, and Outside Counsel (and their support staff).

24 B. Disclosure or Discovery Material

25 All items or information, regardless of the medium or manner generated,
26 stored, or maintained (including, among other things, testimony, transcripts, or
27 tangible things) that are produced or generated in disclosures or responses to
28 discovery in this matter.

1 C. “Confidential Information” or Items

2 Information (regardless of how generated, stored or maintained) or tangible
3 things that contains or discloses trade secrets or confidential research, development,
4 commercial, financial or proprietary information, or which contains or discloses
5 information protected by the right to privacy.

6 Confidential Information shall not include any document, information, or
7 other material that:

8 (i) is, at the time of disclosure, in the public domain by publication or
9 otherwise;

10 (ii) becomes at any time, through no act or failure to act on the part of the
11 Receiving Party, part of the public domain by lawful publication or other lawful act;

12 (iii) is already in the possession of the Receiving Party at the time of
13 disclosure and was not acquired directly or indirectly from the Producing Party; or

14 (iv) is made available to the Receiving Party by a third party who obtained
15 the same by legal means and without any obligation of confidence to the party
16 claiming its confidential nature.

17 D. Receiving Party

18 A Party that receives Disclosure or Discovery Material from a Producing
19 Party.

20 E. Producing Party

21 A Party or non-party that produces Disclosure or Discovery Material in this
22 action.

23 F. Designating Party

24 A Party or non-party that designates information or items that it produces in
25 disclosures or in responses to discovery as “Confidential.”

26 G. Protected Material

27 Any Disclosure or Discovery Material that is designated as “Confidential.”

28 H. Outside Counsel

Attorneys who are not employees of a Party but who are retained to represent or advise a Party in this action.

I. House Counsel

Attorneys who are employees of a Party.

J. Counsel (without qualifier)

Outside Counsel and House Counsel (as well as their support staffs).

K. Expert

A person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this action. "Expert" also shall mean an employee of a party who is retained as an expert in this action. This definition includes a professional jury or trial consultant retained in connection with this litigation.

L. Professional Vendors

Persons or entities who provide litigation support services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing, storing, retrieving data in any form or medium; etc.) and their employees and subcontractors.

II. SCOPE

The protections conferred by this Order cover not only Protected Material (as defined above), but also any information copied or extracted therefrom, as well as all copies, excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by parties or counsel to or in other settings that might reveal Protected Material. This Order does not apply to court hearings or proceedings. The use of Confidential information or items in court hearings or proceedings will be addressed with the judicial officer conducting the proceeding at the appropriate time.

III. DURATION

Even after the termination of this litigation, the confidentiality obligations

1 imposed by this Order shall remain in effect until a Designating Party agrees
 2 otherwise in writing or a Court Order otherwise directs.

3 **IV. DESIGNATING PROTECTED MATERIAL**

4 A. Exercise of Restraint and Care in Designating Material for Protection.

5 Each Party or non-party that designates information or items for protection
 6 under this Order must take care to limit any such designation to specific material
 7 that qualifies under the appropriate standards. A Designating Party must take care
 8 to designate for protection only those parts of material, documents, items, or oral or
 9 written communications that qualify — so that other portions of the material,
 10 documents, items, or communications for which protection is not warranted are not
 11 swept unjustifiably within the ambit of this Order.

12 Mass, indiscriminate, or routinized designations are prohibited. Designations
 13 that are shown to be clearly unjustified, or that have been made for an improper
 14 purpose (e.g., to unnecessarily encumber or retard the case development process, or
 15 to impose unnecessary expenses and burdens on other parties), may expose the
 16 Designating Party to sanctions.

17 If it comes to a Party's or a non-party's attention that information or items
 18 that it designated for protection do not qualify for protection, that Party or non-party
 19 must promptly notify all other parties that it is withdrawing the prior designation.

20 B. Manner and Timing of Designations.

21 Except as otherwise provided in this Order, or as otherwise stipulated or
 22 ordered, material that qualifies for protection under this Order must be clearly so
 23 designated before the material is disclosed or produced.

24 Designation in conformity with this Order requires:

25 (i) For information in documentary form (apart from transcripts of
 26 depositions or other pretrial or trial proceedings), that the Producing Party affix the
 27 legend "CONFIDENTIAL" at the top or bottom of each page that contains protected
 28 material. If only a portion or portions of the material on a page qualifies for

1 protection, the Producing Party also must clearly identify the protected portion(s)
2 (e.g., by making appropriate “CONFIDENTIAL” markings in the margins).

3 A Party or non-party that makes original documents or materials available for
4 inspection need not designate them for protection until after the inspecting Party has
5 indicated which material it would like copied and produced. During the inspection
6 and before the designation, all of the material made available for inspection shall be
7 deemed “CONFIDENTIAL.” After the inspecting Party has identified the
8 documents it wants copied and produced, the Producing Party must determine which
9 documents, or portions thereof, qualify for protection under this Order, then, before
10 producing the specified documents, the Producing Party must affix the appropriate
11 “CONFIDENTIAL” legend at the top or bottom of each page that contains Protected
12 Material. If only a portion or portions of the material on a page qualifies for
13 protection, the Producing Party also must clearly identify the protected portion(s)
14 (e.g., by making appropriate “CONFIDENTIAL” markings in the margins).

15 (ii) For testimony given in deposition, that the Party or non-party offering
16 or sponsoring the testimony identify on the record, before the close of the
17 deposition, all protected testimony, and further specify any portions of the testimony
18 that qualify as “CONFIDENTIAL.” When it is impractical to identify separately
19 each portion of testimony that is entitled to protection, and when it appears that
20 substantial portions of the testimony may qualify for protection, the Party or non-
21 party that sponsors, offers, or gives the testimony may invoke on the record (before
22 the deposition is concluded) a right to have up to 15 days after receipt of the
23 transcript to identify the specific portions of the testimony as to which protection is
24 sought. Once this right to designate portions of the transcript as Protected Material
25 has been invoked, the entire transcript, and all testimony given in the deposition,
26 shall be treated as “CONFIDENTIAL” until the 15 day period has lapsed; thereafter,
27 only those portions of the testimony that are appropriately designated for protection
28 within the 15 days shall be covered by the provisions of this Stipulated Protective

1 Order, unless a Designating party specifies that the entire transcript shall be treated
2 as “CONFIDENTIAL.”

3 Transcript pages containing Protected Material must be separately bound by
4 the court reporter, who must affix to the top or bottom of each such page the legend
5 “CONFIDENTIAL,” as instructed by the Party or non-party offering or sponsoring
6 the witness or presenting the testimony.

7 (iii) For information produced in some form other than documentary, and
8 for any other tangible items, that the Producing Party affix in a prominent place on
9 the exterior of the container or containers in which the information or item is stored
10 the legend “CONFIDENTIAL.” If only portions of the information or item warrant
11 protection, the Producing Party, to the extent practicable, shall identify the protected
12 portions.

13 C. Inadvertent Failures to Designate.

14 An inadvertent failure to designate qualified information or items as
15 “CONFIDENTIAL” does not, standing alone, waive the Designating Party’s right to
16 secure protection under this Order for such material. If material is appropriately
17 designated as “CONFIDENTIAL” after the material was initially produced, the
18 Receiving Party, on timely notification of the designation, must make reasonable
19 efforts to assure that the material is treated in accordance with the provisions of this
20 Order.

21 V. **CHALLENGING CONFIDENTIALITY DESIGNATIONS**

22 A. Timing of Challenges.

23 Any Party or Non-Party may challenge a designation of confidentiality at any
24 time. Unless a prompt challenge to a Designating Party’s confidentiality
25 designation is necessary to avoid foreseeable substantial unfairness, unnecessary
26 economic burdens, or a later significant disruption or delay of the litigation, a Party
27 does not waive its right to challenge a confidentiality designation by electing not to
28 mount a challenge promptly after the original designation is disclosed.

1 B. Meet and Confer.

2 A Party that elects to initiate a challenge to a Designating Party's
3 confidentiality designation must do so in good faith and must begin the process by
4 conferring directly (in voice to voice dialogue) with counsel for the Designating
5 Party. Once the counsel for the challenging party makes counsel for the Designating
6 Party aware of his desire to meet and confer, the counsel for the parties must begin
7 the process by conferring within 10 days. In conferring, the challenging Party must
8 explain the basis for its belief that the confidentiality designation was not proper and
9 must give the Designating Party an opportunity to review the designated material, to
10 reconsider the circumstances, and, if no change in designation is offered, to explain
11 the basis for the chosen designation. A challenging Party may proceed to the next
12 stage of the challenge process only if it has engaged in this meet and confer process
13 first or establishes that the Designating Party is unwilling to participate in the meet
14 and confer process in a timely manner.

15 C. Judicial Intervention.

16 A Party that elects to press a challenge to a confidentiality designation after
17 considering the justification offered by the Designating Party may file and serve a
18 motion that identifies the challenged material and sets forth in detail the basis for the
19 challenge. Each such motion shall set forth with specificity the justification for the
20 confidentiality designation that was given by the Designating Party in the meet and
21 confer dialogue required under Paragraph V(B), *supra.*, or explain that no
22 justification was given, if that is the case.

23 The burden of persuasion in any such challenge proceeding shall be on the
24 Designating Party. Until the Court rules on the challenge, all parties shall continue
25 to afford the material in question the level of protection to which it is entitled under
26 the Producing Party's designation.

27 Any motion brought pursuant to this Section shall be governed by Local
28 Rules 37-1 and 37-1 (including the Joint Stipulation Requirement).

1 **VI. ACCESS TO AND USE OF PROTECTED MATERIAL**

2 A. Basic Principles.

3 A Receiving Party may use Protected Material that is disclosed or produced
4 by another Party or by a non-party in connection with this case only for prosecuting,
5 defending, or attempting to settle this litigation. Such Protected Material may be
6 disclosed only to the categories of persons and under the conditions described in this
7 Order. When the litigation has been terminated, a Receiving Party must comply
8 with the provisions of Section X below.

9 Protected Material must be stored and maintained by a Receiving Party at a
10 location and in a secure manner that ensures that access is limited to the persons
11 authorized under this Order.

12 B. Disclosure of Confidential Information or Items.

13 Unless otherwise ordered by the Court or permitted in writing by the
14 Designating Party, a Receiving Party may disclose any information or item
15 designated “CONFIDENTIAL” only to:

16 (i) the Receiving Party’s Outside Counsel of record in this action, as well
17 as employees of said Counsel to whom it is reasonably necessary to disclose the
18 information for this litigation;

19 (ii) the officers, directors, and employees (including House Counsel) of the
20 Receiving Party to whom disclosure is reasonably necessary for this litigation;

21 (iii) experts (as defined in this Order) of the Receiving Party to whom
22 disclosure is reasonably necessary for this litigation and who have signed the
23 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

24 (iv) the Court and its personnel;

25 (v) court reporters, their staffs, and professional vendors to whom
26 disclosure is reasonably necessary for this litigation;

27 (vi) during their depositions, witnesses in the action to whom disclosure is
28 reasonably necessary for this litigation and who have signed the “Acknowledgment

1 and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the
 2 Designating Party or ordered by the court. Pages of transcribed deposition
 3 testimony or exhibits to depositions that reveal Protected Material must be
 4 separately bound by the court reporter and may not be disclosed to anyone except as
 5 permitted under this Stipulated Protective Order;

6 (vii) the author of the document or the original source of the information.

7 **VII. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
 8 **PRODUCED IN OTHER LITIGATION.**

9 If a Receiving Party is served with a subpoena or an order issued in other
 10 litigation that would compel disclosure of any information or items designated in
 11 this action as “CONFIDENTIAL,” the Receiving Party must so notify the
 12 Designating Party, in writing (by email or fax, if possible) immediately and in no
 13 event more than three court days after receiving the subpoena or order. Such
 14 notification must include a copy of the subpoena or court order.

15 The Receiving Party also must immediately inform in writing the Party who
 16 caused the subpoena or order to issue in the other litigation that some or all the
 17 material covered by the subpoena or order is the subject of this Protective Order. In
 18 addition, the Receiving Party must deliver a copy of this Stipulated Protective Order
 19 promptly to the Party in the other action that caused the subpoena or order to issue.

20 The purpose of imposing these duties is to alert the interested parties to the
 21 existence of this Protective Order and to afford the Designating Party in this case an
 22 opportunity to try to protect its confidentiality interests in the Court from which the
 23 subpoena or order issued. The Designating Party shall bear the burdens and the
 24 expenses of seeking protection in that Court of its confidential material — and
 25 nothing in these provisions should be construed as authorizing or encouraging a
 26 Receiving Party in this action to disobey a lawful subpoena issued in another action.

27 **VIII. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL.**

28 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed

1 Protected Material to any person or in any circumstance not authorized under this
2 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
3 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
4 to retrieve all copies of the Protected Material, (c) inform the person or persons to
5 whom unauthorized disclosures were made of all the terms of this Order, and (d)
6 request such person or persons to execute the “Acknowledgment and Agreement to
7 Be Bound” that is attached hereto as **Exhibit A**.

8 **IX. FILING OF PROTECTED MATERIAL.**

9 In Accordance with Local Rule 79-5.1, if any papers to be filed with the
10 Court contain information and/or documents that have been designated as
11 “CONFIDENTIAL,” the proposed filing shall be accompanied by an application to
12 file the papers or the portion thereof containing the designated information or
13 documents (if such portion is segregable) under seal; the application shall be
14 directed to the judge to whom the papers are directed. The application shall comply
15 in all respects with L.R. 79-5 and the procedures set forth on the Court’s website,
16 including specifically those set forth in the “Overview of Filing Documents Under
17 Seal in a Non-Sealed Civil Case,” available on the Court’s website. For motions,
18 the parties shall publicly file a redacted version of the motion and supporting papers,
19 in accordance with L.R. 79-5.2.2(a).

20 **X. FINAL DISPOSITION.**

21 Unless otherwise ordered or agreed in writing by the Producing Party, within
22 sixty days after the final termination of this action including appeals, each Receiving
23 Party must: (a) return all Protected Material to the Producing Party; or (b) destroy
24 the Protected Material. As used in this subdivision, “all Protected Material”
25 includes all copies, abstracts, compilations, summaries or any other form of
26 reproducing or capturing any of the Protected Material. Whether the Protected
27 Material is returned or destroyed, the Receiving Party must submit a written
28 certification to the Producing Party (and, if not the same person or entity, to the

Designating Party) by the sixty day deadline that identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and that affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or other forms of reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain archival copies of all pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section III (DURATION) above.

XI. MISCELLANEOUS

A. Right to Further Relief.

Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

B. Right to Assert Other Objections.

By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

IT IS SO ORDERED.

Dated: June 30, 2016


Jay C. Gandhi
U.S. Magistrate Judge

EXHIBIT A

I, _____, declare as follows:

1. My present address is: _____.
2. My present occupation or job description is: _____.
3. My present employer is: _____.
4. I have received a copy of the Stipulated Protective Order (“Order”)

entered in *Power Probe, Inc. v. Daniel Barber Sullivan.*, Case No. 8:15-CV-01404 JLS (JCG) pending in the United States District Court for the Central District of California. I have carefully read and understand the provisions of the Order.

5. I will comply with all of the provisions of the Order. I will hold in confidence, will not disclose to anyone other than those persons specifically authorized by the Order, and will not copy or use except for the purposes of this action, any Protected Material that I receive in this action.

6. I submit to the jurisdiction of this Court for the purposes of enforcement of this Order.

Executed this ____ day of _____ 20__, in the County of _____, State of _____.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

SIGNATURE OF DECLARANT